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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,904	01/11/2002	William F. Strutz	EISE096-2/LWT	7217
7590	05/05/2004		EXAMINER	
Terril G. Lewis HOWREY SIMON ARNOLD & WHITE, LLP 750 Bering Drive Houston, TX 77057-2198			GOETZ, JOHN S	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/043,904	Applicant(s) STRUTZ ET AL.	
	Examiner John S. Goetz	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-144 is/are pending in the application.
- 4a) Of the above claim(s) 105-118 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42-104 and 119-144 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>0</u> . | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I in the correspondence dated 3/29/04 is acknowledged. The traversal is on the grounds that there would be no serious burden on the Examiner. This is not found persuasive because the speed and torque limitations, as broadly recited, are known to various other closely analogous arts such as rock grinders, shredders, and the like.

2. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 42, 44, 45, 48-50, 52-63, 65-68, and are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hashiba (JP 10-202132 A). Hashiba discloses each and every limitation of these claims, including, *inter alia*, rotating the grinding mechanism at a first rotational speed for a first period of time (here, the period of time is until the noise level drops below a predetermined level), rotating the grinding mechanism at a second rotational speed for a first period of time (here, the period of time is when the machine is automatically turned off or until the noise level increases above a predetermined level), where the second speed is less than the first.

5. Claims 48-50 and 52 add various configurations of the three speeds. These claims are broadly recited. The Hashiba discloses three speeds - one that is maintained at a certain decibel level, one that is maintained at a second descible level, and one that is equal to zero when the machine is off. This disclosure, by adjusting which speed is to be considered "first" or "second" or "third" Hashiba necessarily contains these limitations as claimed. Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 43, 46, 47, 51, 64, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashiba in view of Brenner et al. (4,128,210). Claims 43, 46, 47, 51, 64, add a well-known motor type and various rotational speed ranges. Brenner discloses, in the art of food waste disposers, a rotational speed of up to 11,000 rpm "for improved comminuting of the waste material by the disposer." Column 3, lines 55-56. First, it would have been an obvious matter of design choice to provide Hashiba with switched reluctance motor, since the applicant has not disclosed that this motor solves any stated problem or is for any particular purpose. Additionally, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Hashiba with a variety of rotational speed settings up to 11,000 rpm, in order to improve comminuting of the waste by the disposer, as suggested by Brenner.

8. Claims 85-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashiba in view of Official notice.

9. Claim 85 adds varying of the motor speed while water is being provided. Official notice is taken of the fact that it is well known in the waste disposer art to utilize water in order to facilitate comminuting. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Hashiba's disclosed method of operation with the introduction of water at various stages of the process in order to facilitate comminuting.

10. With respect to the dependent claims 86-104, they are each either obvious matters of design choice or are necessarily present in the Hashsiba reference.

11. Claims 85-104 (in the alternative) and 119-144 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Endo (JP 05-096198 A). Independent claims 119 and 130 add to the prior art the method step of increasing the speed of the motor for a time and varying the speed for a time. Endo, in the closely analogous art of controlling a shredder, teaches controlling the motor speed (raises the speed for high loads and lowers it for low loads) of the shedder based on load data such as torque. This, according to Endo, improves the shedder's durability and prevents excessive forces on the shedder. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the prior art food waste disposers with a control mechanism that, based on a load measurement of the comminuting tool, raises the speed for high loads and lowers it for low loads in order to improve the operational tool's durability and prevent excessive forces on the operational tools, as suggested by Endo.

Art Unit: 3725

12. With respect to the dependent claims 86-104, 120-129 and 131-144, they are each either obvious matters of design choice or are necessarily present in the AAPA or the Endo reference.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Goetz whose telephone number is 703-308-1411. The examiner can normally be reached on Mon, Tues, Thurs, Fri 7:00am-5:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen Ostrager can be reached on 703-308-3136. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-3136.

JSG



ALLEN OSTRAGER
SUPERVISORY PATENT EXAMINER
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